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February 29, 2024

## **VIA ECF**

Honorable Jesse M. Furman, U.S.D.J.  
Thurgood Marshall  
United States District Court, S.D.N.Y.  
40 Foley Square  
New York, NY 10007

Re: *Travis Venning v. Primark US Corp.*  
Case No.: 23-cv-10176 (JMF)

Dear Judge Furman:

We represent Defendant Primark US Corp. in the above-referenced matter. We write, pursuant to Section 2(E) of Your Honor's Individual Rules and Practices in Civil Cases, to request an adjournment of the initial pre-trial conference, currently scheduled for March 13, 2024.

As the Court is aware, we were recently substituted as counsel. *See* Dkt. No. 25 (2/22/24 Order approving substitution). I will be out of the country during the week of March 8 through March 15, 2024, when the conference is scheduled. This is the second request for an adjournment of the initial pre-trial conference. A prior request was made by Plaintiff and to allow the Defendant to substitute counsel. Plaintiff's counsel consents to the adjournment request.

Additionally, Defendant intends to file a motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) to dismiss the Amended Complaint. The Amended Complaint alleges violation of New York Labor Law ("NYLL") § 191, which relates to the frequency in which payroll is processed. Plaintiff alleges he was paid biweekly and should have been paid weekly. But on January 17, 2024 the New York State Appellate Division, Second Department, held there is no private right of action for errors in the frequency in which employers process payroll under NYLL § 191. *Grant v. Glob. Aircraft Dispatch, Inc.*, No. 2021-03202 (Index No. 720074/2019) 2024 N.Y. App. Div. LEXIS 180 (2d Dep't Jan 17, 2024).<sup>1</sup> The Appellate Divisions in New York are split on the issue. *See Vega v. CM Assoc. Constr. Mgt., LLC*, 175 A.D.3d 1144 (1st Dep't 2019) (finding a private right of action, express or implied).

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<sup>1</sup> Plaintiff's motion to the Appellate Division for leave to appeal to the Court of Appeals in *Grant* is currently pending.

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The other claims in the Amended Complaint, violations of NYLL § 195, concern alleged failure to provide wage statements and notices. Plaintiff lacks Article III standing to assert these claims, and therefore, they must also be dismissed. *See, e.g., Melgar v Pie Chatach 1776 LLC*, No. 23-cv-917, 2023 U.S. Dist. LEXIS 62502, at \*2-6 (E.D.N.Y. Apr. 10, 2023) (no Article III standing for wage notice or statement claims); *Guthrie v. Rainbow Fencing, Inc.*, No. 21-cv-5929, 2023 U.S. Dist. LEXIS 31177, \*8-9 (E.D.N.Y. Feb. 24, 2023) (same). “No concrete harm, no standing.” *TransUnion v. Ramirez*, 141 S. Ct. 2190, 2200 (2021).

The parties have conferred and agree to the following briefing schedule, subject to the Court’s approval:

1. Defendant’s motion to be filed by March 29, 2024;
2. Plaintiff’s response to be filed by April 26, 2024;
3. Defendant’s reply to be filed by May 17, 2024.

Thus, the parties also request that the Court adjourn the initial conference, until after the motion for judgment on the pleadings is decided.

Respectfully submitted,

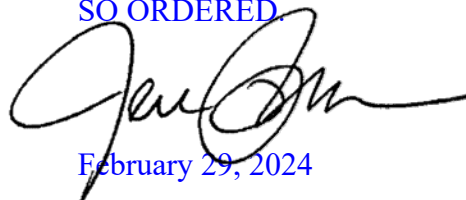
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*s/ Jeffrey W. Brecher*  
Jeffrey W. Brecher, Esq.

Cc: Counsel of Record (*via ECF*)

Application GRANTED. In light of Defendant's anticipated motion, the initial pretrial conference currently scheduled for March 13, 2024 is hereby ADJOURNED *sine die*. The Clerk is directed to terminate ECF No. 26.

SO ORDERED.



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